other forms in which the question has been presented to the courts.[17] The test is always the nature and character of the power sought to be conferred. While loath to hold a legislative enactment invalid, the courts have carefully guarded the basic theory of our government, and all the opinions show that the question has been handled thoughtfully, lest one department acquire all the power or the judiciary lose its independence either to the legislature, the executive or to the seeker of political favor.

It has recently been held[18] by the Court of Appeals of Maryland that the issuance of a license by a circuit court to permit betting on horse racing, is a non-judicial function. In this case the application for a license was made direct to the court, which itself issued it. A former widely cited decision[19] was distinguished on the ground that in that case the county clerk issued the license, and the court was empowered merely to decide in case of dispute as to the applicant's qualifications whether the license should issue. The holding is undoubtedly in line with the other decisions[20] in the same State, where the judicial character of the judge has always been closely guarded.

In Virginia, it has been held that the power of appointing commissioners of revenue might be conferred on judges of the cirsuit courts.[21] The appointment of many other minor officials is likewise lodged there by statute. The circuit courts may also exercise the power of fixing the boundaries and determining the expediency of extending the corporate limits of cities and towns.[22] In some States the judiciary would be incapable of exercising either of these powers.

CONSTRUCTIVE NOTICE AS APPLIED TO NEGOTIABLE PAPER.—The question of what facts, evident in dealings with negotiable paper, are sufficient to charge all takers with notice of defects in the paper is one of ever present interest. Closely related to this is the subject of notice of the misuse of a position of trust and confidence, to be obtained from the method of handling by an agent of the principal's negotiable paper. In general, such constructive notice may be divided into two classes:

1. Notice imputed because of bad faith in failing to follow up a suspicion of a defect; and,

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[17] State *v.* Young, 29 Minn. 474, 9 N. W. 737; *Ex parte* Griffiths, 118 Ind. 83, 20 N. E. 513, 3 L. R. A. 398; Board of Commissioners *v.* Gwin, 136 Ind. 562, 36 N. E. 237, 22 L. R. A. 402.

[18] Close *v.* Southern Maryland Agricultural Ass'n (Md.), 108 Atl. 209.

[19] McCrea *v.* Roberts, 89 Md. 238, 43 Atl. 39, 44 L. R. A. 485.

[20] Beasley *v.* Ridout, 94 Md. 641, 52 Atl. 61; Board of Supervisors *v.* Todd, 97 Md. 247, 54 Atl. 963, 99 Am. St. Rep. 438, 62 L. R. A. 809.

[21] Barbour *v.* Grimsley, 107 Va. 814, 61 S. E. 1135.

[22] Henrico County *v.* City of Richmond, 106 Va. 282, 55 S. E. 683; note dissent of Buchanan, J. See also Winchester, etc., R. Co. *v.* Commonwealth, 106 Va. 264, 55 S. E. 692.

2. Notice presumed as a matter of law, irrespective of bad faith.

Originally the test of the existence of constructive notice was whether such facts existed as would be sufficient to put a reasonable man on inquiry.[1] But with the marked tendency in the law to get away from this unreasonable test of "a reasonable man"—whereby it was attempted to measure all men by a standard hidebound form (the man of ordinary intelligence)—this test has been abandoned.[2] The first class now presents an interesting situation, in which the law is a respecter of persons, despite the old proverb. In this there is an example of the true wisdom and justice of the law. The test now is whether the person in question did actually suspect a flaw, not whether a reasonable man would have suspected a flaw. In other words, the test is whether good faith was used.[3] Thus the law looks to the person. The facts which should put the business man on inquiry are not such as would necessarily create suspicion in the mind of the unlettered man. Thus it might happen that in identical transactions the ignorant man would be in a better position than the man of business.[4]

The unqualified adoption of the good faith test would exclude our second class, since good faith would operate with saving grace to shield the taker from harm. The second class exists as a qualification of the first. In it are included the cases in which the facts are such as to raise a duty of inquiry. The failure to make inquiry is so suggestive of bad faith as to be the equivalent of notice.[5] And this is true, even though the party chargeable with notice acted in the best of faith. In such cases "the paper bears its death wound upon its face." [6] Obviously, for this to be true, there must be facts which clearly indicate the possibility of improper handling. Instances of this arise chiefly in the handling of paper by a trustee or an agent in such a way as to create suspicion as to the honesty of the transaction.[7]

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[1] Russell *v.* Hadduck, 8 Ill. 233, 44 Am. Dec. 693.

[2] Smith *v.* Livingston, 111 Mass. 342; Phelan *v.* Moss, 67 Pa. St. 59; Goodman *v.* Simonds, 20 How. 343; Mass. Nat. Bank *v.* Snow, 187 Mass. 159, 72 N. E. 959.

[3] Hamilton *v.* Vought, 34 N. J. L. 187; Hamilton *v.* Marks, 63 Mo. 167.

[4] LILE, NOTES ON BIGELOW'S BILLS, NOTES AND CHECKS, p. 57, where it is said: "It must appear that he (the holder) *did suspect* * * *. In short, the more unsophisticated and gullible the holder is, the better his title." This is a case in which ignorance is bliss.

[5] *Id.*, p. 58.

[6] Capital City Brick Co. *v.* Jackson, 2 Ga. App. 771, 59 S. E. 92.

[7] In LILE, NOTES ON BIGELOW'S BILLS, NOTES AND CHECKS, p. 58, it is said: "Thus, where it appears from the paper itself that an agent is abusing, or may be abusing, his agency for his personal benefit, purchasers are put on inquiry—as, for example, * * * where he (the agent) discounts a note or deposits a check payable to his principal, and directs the discounting or drawee bank to place the proceeds *to his individual account.*"

The rule governing constructive notice in other branches of the law is not always applicable to negotiable paper. It is interesting here to notice some decisions in cases where notice is to be had from the face of the negotiable paper or from the transaction.

One dealing with an executor is charged with notice, if it appear from the face of the transaction that the executor is applying the proceeds to his own private purposes.[8] Also, a person dealing with an agent is bound to observe the limits of the agent's authority. The buyer of a corporation note is not an innocent holder, when it appears on the face of the note that the payee and the officer by whom drawn are the same person.[9] The fact that an agent executing a note in the name of his principal is one of the payees of the note is notice of the agent's want of authority.[10] A note, showing on its face that it was issued by the treasurer of a corporation to himself and used for his personal benefit, is sufficient to put the purchaser on notice.[11] A note, signed by the treasurer and vice-president of a corporation and payable to the vice-president, carries with it notice of possible equities.[12] A certificate of deposit, made payable to a guardian and indorsed by him as guardian, charged the bank with notice of the fiduciary nature of the funds.[13] And where the notes were signed by a receiver and indorsed by him personally, the purchaser took with notice of the receiver's want of authority.[14] In general, wherever a person receives from an officer corporate obligations drawn by the latter in his own favor and for his individual use, such person is put on inquiry to determine whether the officer has the right to use such obligations.[15]

Clearly, when a bank receives checks, drawn by an agent in the name of the principal, in payment of the agent's private obligation to it, it is chargeable with notice of the misappropriation of the principal's funds.[16] And always, when the person taking the principal's paper signed by the agent takes it in payment of some personal obligation of the agent, notice should be presumed as a matter of law.[17]

A leading case refusing to charge a drawee bank with notice of misuse of agency was *Havana Central R. Co.* v. *Central Trust Co. of New York*.[18] Here checks were drawn on corporate funds, signed in the corporate name by the treasurer and payable

[8] See Jones' Ex'rs *v.* Clark, 25 Gratt. (Va.), 642, 657.
[9] Stough *v.* Ponca Mill Co., 54 Neb. 500, 74 N. W. 868.
[10] Third Nat. Bank *v.* Marine Lumber Co., 44 Minn. 65, 46 N. W. 145.
[11] Randall *v.* Rhode Island Lumber Co., 20 R. I. 625.
[12] Newman *v.* Newman, 145 N. Y. Supp. 325.
[13] U. S. Fidelity, etc., Co. *v.* Adoue, 104 Tex. 379, 137 S. W. 648.
[14] Zielian *v.* Baltimore Plate Ice Co., 115 Md. 658, 81 Atl. 22.
[15] Squire *v.* Ordemann, 194 N. Y. 394, 87 N. E. 435; Niagara Woolen Co. *v.* Pac. Bank, 126 N. Y. Supp. 890.
[16] See Ward *v.* City Trust Co., 192 N. Y. 61, 84 N. E. 585.
[17] Safe Deposit, etc., Co. *v.* Diamond Nat. Bank, 194 Pa. St. 334, 44 Atl. 1064.
[18] 123 C. C. A. 72, 204 Fed. 546.

to the treasurer or to another person, and were indorsed by the treasurer. It was held that the bank was not chargeable with notice of misconduct by the treasurer. Upon the facts in that very case, however, the New York Supreme Court, Appellate Division, First Department, had reached the opposite conclusion.[19]

In the light of these decisions, a recent Virginia case from one of the inferior courts of the city of Richmond is interesting. A check, obtained by false representations, was made payable to the "W. B. Pizzini Co., Agents" and was indorsed "W. B. Pizzini Co., Agents, by Wm. B. Pizzini, Treas.," was collected by the defendant bank, and was deposited at Pizzini's request to his individual account. Pizzini later checked the amount out by his private checks and appropriated the money. The W. B. Pizzini Co. then became utterly insolvent. In a suit by the drawer of the check against the bank, *Held,* the bank is not liable. It will be noted that this case involves the question of what facts would be sufficient to put the bank on notice of Pizzini's misuse of his official position.

It is axiomatic that an agent cannot deal with the subject matter of the agency for his own profit. Such conduct would be a breach of the trust imposed in him and a gross wrong to his principal. It is also obvious that the agent here had the power to sign the firm name in all transactions to which the firm was a party. Then, if the deposit was to be used for firm purposes, as it could only properly be used, the regular and natural method of dealing with it would be to deposit it to the firm credit and draw on it by firm checks. A departure from this natural means of handling the fund should have suggested some reason for such departure. And when it had the effect of placing the fund at the absolute disposal of the agent, suspicion should necessarily have crept in; especially since the bank knew the check was not payable to the treasurer personally, but in a representative capacity, and also that if it were deposited in the normal way, the agent might experience some difficulty in disposing of it to his personal advantage. Thus, while the agent's method of handling the fund did not conclusively show misdealing on his part, it did present a set of facts which clearly showed the possibility, indeed almost the likelihood, of misdealing. This in itself raised so strongly in the bank the duty of inquiry that it is submitted the failure to inquire was equivalent to bad faith and should have been held sufficient to charge the bank with notice.

It seems that the proper guiding principle in such cases should be fixed by a careful weighing of two policies of the law, which necessarily come into some conflict here. One is the great favor given to negotiable instruments; the other, that strong policy, the prevention of fraud. An increase in the range of constructive notice as applicable to negotiable paper may, to a slight extent,

[19] Havana Central R. Co. *v.* Knickerbocker Trust Co., 119 N. Y. Supp. 1035.

decrease the negotiability of this commercial paper. But such an increase should also place a not inconsiderable obstacle in the way of misappropriation of funds by an agent. And the limits of constructive notice, laid down in the cases given above, are in keeping with the spirit of the law merchant. A negotiable instrument is said to be "a courier without luggage, whose countenance is his passport." If that countenance be good, let him pass. But if that countenance be evil or suggestive of evil, his passport is evidently of no value. Therefore, it is believed that the best policy of the State would be served by observing the doctrine of constructive notice in transactions with negotiable paper.

THE RIGHT OF AN INFANT TO SUE ITS PARENT FOR MAINTENANCE.—The English courts have consistently held that the duty of a father to maintain his infant child is a moral duty only, which the courts will not undertake to enforce. This doctrine is so far extended that a third person, who out of kindness of heart furnishes the neglected child with necessaries, cannot recover their value from the father, in the absence of an express or an implied promise on the part of the father to pay for them. And the moral obligation imposed on the parent is not, of itself, strong enough to imply such a promise.[1] This view has been adopted and followed by a few American courts,[2] but the vast majority of them and practically all of the American text-books [3] hold that the duty the parent owes his infant child is not merely a moral, but a legal one as well, and that it will be enforced, even though the infant has property of its own, sufficient for its support.[4]

While the existence of this legal duty is thus admitted, there is a wide diversity of opinion as to the method of enforcing it. As a general proposition, an infant cannot sue its parent to redress a purely personal wrong, and the text-books have surmised, therefore, that neither can an infant sue its parent for maintenance.[5] The profession also seem to have come to the conclusion that such a suit is not maintainable, as is evidenced by the fact that there are very few reported cases directly bearing on the question. In the Missouri case of *Huke* v. *Huke* [6] it was held that a bill filed by an infant against her father, petitioning the court for a decree of maintenance, was demurrable on the ground that an equity court has no jurisdiction to try such suits. But it

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[1] Shelton *v.* Springett, 11 C. B. 452.

[2] Kelly *v.* Davis, 49 N. H. 176, 6 Am. Rep. 499; Holt *v.* Baldwin, 46 Mo. 265, 2 Am. Rep. 515.

[3] 20 R. C. L. 622; 29 Cyc. 1606.

[4] Stanton *v.* Willson's Ex'rs, 3 Day (Conn.) 37, 3 Am. Dec. 255; Evans *v.* Pearce, 15 Gratt. (Va.) 513, 78 Am. Dec. 635; Porter *v.* Powell, 79 Iowa 151, 44 N. W. 295, 7 L. R. A. 176.

[5] 29 Cyc. 1663.

[6] 44 Mo. App. 308.